

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9182 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.

RAJYA GENERAL KAMDAR MANDAL

Versus

MANAGING DIRECTOR/MANAGER

Appearance:

MR MS MANSURI for Petitioners
MR KM PATEL for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 04/08/98

ORAL JUDGEMENT

Rule. Mr. K.M. Patel, learned advocate for respondent no.1 and Mr. V.B. Gharaniya, learned AGP waive service of rule on behalf of the respondents.

2. In the facts and circumstances of the case, I proceed to finally disposed of this petition by issuing

Rule today.

3. This petition is filed by the Rajya General Kamdar Mandal, a registered Trade Union representing the workmen of respondent no.1 Gujarat Containers Limited. It is claim of the petitioner that the respondent no.1 is engaging workmen through contractors-respondents no.2 & 3. It is further claim of the petitioner that the work which the workmen are carrying is of a permanent nature. It is further contended that the respondents no.1 to 3 are not paying the minimum wages as per the provisions by the Minimum Wages Act. It is further claimed that the respondents no.2 & 3 have continued breach of contravention of the condition of license issued in their favour and therefore, in these circumstances, their license ought to have been revoked. They had made representation to respondent no.4. The respondent no.4 had not taken any action against the respondent no.2 & 3. Therefore they seek the following reliefs in this petition.

"(a) to issue a writ of Mandamus, a writ of Cereiorary or any other appropriate writ, order or direction to the Respondent no.4 to withdraw/cancel the license given to the respondent no.1,2 & 3 under Contract Labour Regulation and Abolition Act, 1970 and further direct the respondent No.1 & 2 to absorb all the workmen whose names are given Annexure 'A' to this petition as they are directly employed workers, forthwith and to pay them minimum wages prescribed by the respondent no.4 with arrears immediately."

" (b) to direct the Respondent no.4 to take further appropriate action against the Respondent no.1 for enforcement and implementation of Industrial Employment Standing Orders Act, Factories Act, and Minimum Wages Act."

"(c) Pending hearing and final disposal of this petition by way of interim relief, the respondents no.1-3 may be restrained from discontinuing the services of any worker whose names appear in Annexure 'A' and also not to withhold the difference in minimum wage from the wages of next month."

" (d) Ex-parte ad-interim relief in terms of para(c) above may be granted."

4. Though the respondents no.2 & 3 are duly served, they have not appeared and they have not contested the claim of the petitioner. The respondent no.1 has contested the claim of the petitioner by filing affidavit-in-reply. It is contended by the respondent no.1 that, section 20 of the Minimum Wages Act, 1948 provides effective remedy under section 20 of the said Act. Therefore, non-compliance of the Minimum Wages Act could not be a ground under Article 226. It is further contended that the petitioners are not entitled to get the relief of becoming regular permanent employees of the respondent no.1. It is further contended that the present Writ is not tenable in law as petitioner got the appropriate and efficacious remedy by approaching the labour authorities. Thus it is contended that the present petition should be dismissed.

5. The Learned Assistant Government Pleader has submitted before me that, as a matter of fact, the respondent no.4 had already initiated prosecution under the Minimum Wages Act as well as Contract Labour (Regulation and Abolition) Act, 1970 and there is no need to give any direction in the matter as already action is taken by the respondent no.2.

6. The petitioners are raising the question of facts on the basis of which they want regularization of the employment of the respondent no.1, therefore, the appropriate forum for them is to raise an industrial dispute to go before the Industrial Court as has been observed by the Supreme Court in the case of R.K. Pandya Vs. Steel Authority of India Ltd. - 1995(4) Supreme Court Cases 134.

7. No doubt the petitioners have averred that the workmen have not paid the minimum wages. The learned advocate for the petitioner has also produced the letter dtd.31.12.97 issued by the Government Industrial Labour Officer, Vadodara. The said letter also supports their claim. If the form for the license to be issued under the Contract Labour (Regulation and Abolition) Act, 1970 is considered, then it seems that one of the condition of the license is to see that the workmen who are employed on the basis of contract must be paid minimum wages. Now, in view of the statutory condition prescribed in the rule, the claim of the petitioner that the license of the respondents no.3 and 4 deserves to be cancelled is to be considered by the authority under the Act of 1970. The petitioners have already made representation before the respondent no.4 in this matter. They have also made representation to the Deputy Commissioner of Labour and

with the licensing authority. Now when the said representations are made by the petitioner, it is incumbent on the said licensing authority to take into consideration the said complaint, and to consider the question as to whether the license of the contractor deserves to be revoked, and then he must give intimation to the present petitioner of the action taken by him. No doubt the learned AGP has stated that already prosecution are initiated under the Minimum Wages Act, as well as under the Contract Labour (Regulation and Abolition) Act, 1970. But merely because of the initiation of the said prosecution, the action of the respondent no.4 as well as Deputy Labour Commissioner in not taking action on the representations made by the present petitioner will not be justified. No doubt the Deputy Commissioner of Labour is not a party to this proceedings, but, when his Superior Officer Commissioner of Labour is made party to this proceedings, it is open for the said respondent no.4 to issue the necessary direction to his subordinate for taking the proper action according to law, on the representation made by the petitioner-workmen as provided by the Act, before taking action of revocation and an opportunity being heard is to be given to the contractors. Therefore, I will only observe that the respondent no.4 should issue the necessary direction and instructions to his subordinate as indicated above.

8. Thus, in view of the above observations, if the petitioners wants to have their regularization as regular workers of the respondent no.1, the appropriate action on their part is to raise an industrial dispute and the respondent no.4 will have to take the appropriate action on the representation made by the present petitioner.

9. Therefore by making the above observations, I hold that the present petition deserved to be disposed of with no order as to cost. Rule is made absolute in the above terms.

syed*